

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6585 of 1996

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BA PATEL

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 31/08/96

ORAL JUDGEMENT

Heard learned Advocate Mrs. Pahwa for the petitioner.

The petitioner at the relevant time was an Assistant Project Officer(Animal Husbandry) under the respondents herein. On 4th March, 1995 a chargesheet was issued to the petitioner for claiming transfer travelling allowance to which he was not entitled under the rules.

After holding due inquiry, the Inquiry Officer submitted his report on 27th November, 1995 and recorded a finding that the charges levelled against the petitioner were not proved. The Disciplinary Authority however, did not agree with the findings recorded by the Inquiry Officer. The Disciplinary Authority, therefore, issued a show cause notice to the petitioner. The said show cause notice contains the detailed reasons why the Disciplinary Authority did not agree with the findings recorded by the Inquiry Officer and also called upon the petitioner to make his submissions in answer to the said show cause notice. The petitioner replied to the said show cause notice and after considering the reply submitted by the petitioner, the Disciplinary Authority on 27th August, 1996 made an order retiring the petitioner from service holding that the charges nos. 1 to 3 levelled against the petitioner were proved. In view of the misconduct proved against the petitioner, the petitioner has been retired from service compulsorily.

It is this order of compulsory retirement which is subject matter of challenge before this Court. Learned Advocate Mrs. Pahwa appearing for the petitioner has submitted that the impugned order of punishment is not a speaking order and does not contain reasons why the charges levelled against the petitioner were held to have been proved. In support of her contention she has relied upon the judgment of the Hon'ble Supreme Court in the matter of STATE BANK OF BIKANER AND JAIPUR VS. SHRI PRABHU DAYAL GROVER (JT 1995 (7) SC 207). This contention of Mrs. Pahwa requires to be rejected outright. The show cause notice issued to the petitioner on 8-3-1996 contains in detail reasons for which the Disciplinary Authority did not agree with the finding recorded by the Inquiry Officer and also contains the reasonings of the Disciplinary Authority why the Disciplinary Authority was of the view that the charges levelled against the petitioner were proved. Thus, the petitioner has been given adequate opportunity to make his submission against the reasoning recorded by the Disciplinary Authority. The Disciplinary Authority is not required to reiterate the very reasoning again in the impugned order of punishment. In the matter of STATE BANK OF BIKANER AND JAIPUR (Supra), the Supreme Court was considering the regulations framed by the bank known as State Bank of Bikaner & Jaipur Officers' Service Regulation, 1979. The said judgment would not ipso facto apply to the facts of the present case. In any view of the matter, the view expressed by the learned Judges of the Supreme Court in paragraph 12 of the said judgment does not support the contention raised by Mrs. Pahwa.

Mrs. Pahwa has further submitted that the inquiry has been instituted at a belated stage, that is, more than four years after the incident. She has submitted that it was in the month of July, 1993 that the preliminary inquiry was held and petitioner was expected to be aware of the whereabouts of his family on the relevant dates in the month of January, 1991. She submits that petitioner could not have remembered such details and, therefore, inquiry into such details is vitiated. In support of her claim she has relied upon the judgment of this Court in the matter of MOHANBHAI DANGARBHAI PARMAR VS. Y.B. ZALA & ANR. (1979 G.L.R. 497). In that matter before this Court the delinquent had remained absent from duty for which an inquiry was instituted a year and a half later. The Court came to the conclusion that after a year and a half, a person would not remember about his whereabouts and the reasons for which he had to remain absent from service. On facts of this case, aforesaid judgment does not apply. In the present case, in the course of preliminary inquiry, the petitioner did make precise statements about how he travelled along with his family and had submitted about each incident of travel for which he claimed transfer travelling allowance. In any view of the matter, such details should be available to the petitioner because he had claimed transfer travelling allowance for the movement of his family on the said dates. Thus, the petitioner was not required to rely upon his memory but the documentary evidence which was available on the record of the inquiry. I, therefore, reject this contention raised by the learned Advocate for the petitioner.

Mrs. Pahwa has further submitted that it is a case of no evidence. Considering that there was no evidence against the petitioner, the Inquiry Officer had recorded the findings in favour of the petitioner. I do not find any substance in this contention also. The Inquiry Officer has in fact recorded the evidence and held that the transfer travelling allowance claimed by the petitioner for his parents was not lawful. However, the petitioner has been given benefit of doubt on the ground that he being a technical officer may not be aware of the position of law. She has further submitted that the Disciplinary Authority having disagreed with the findings of the Inquiry Officer and having called upon the petitioner to make his representation, the Disciplinary Authority was required to hear the petitioner and after hearing the petitioner personally should have come to the conclusion that the charges had been proved against the petitioner. In the present case,

aforesaid formality has not been adhered to, and therefore, it cannot be said that the charges against the petitioner have been proved. As the charges have not been proved the impugned order of penalty is not justified. In support of her plea, she has relied upon the judgment of this Court in the matter of STATE OF BOMBAY VS. AMARSINH RAVAL reported in AIR 1963 GUJARAT 244. In that matter, the Court while considering the scope and ambit of Article 311(2) of the Constitution came to the conclusion that " the reasonable opportunity envisaged by the provision under consideration includes an opportunity to make his representation as to why the proposed punishment should not be inflicted on him." Be it noted that the said matter pertained to an incident which occurred in the year 1954. Since then, the provisions contained in Article 311(2) have been substantially amended. In consonance with the aforesaid amendment made in Article 311(2) of the Constitution an amendment has been made in Rule 10 of the Gujarat Civil Services (Discipline & Appeal) Rules. The said amendment had been introduced in the year 1986. Rule 10(4) of the said rules provides, inter alia, " it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity to make representation on the penalty proposed to be imposed." In view of this express provision, the contention of Mrs. Pahwa requires to be rejected. The Division Bench of this Court also had an occasion to consider a similar contention in the matter of STATE OF GUJARAT VS. G.A.PATEL (1994(1) G.L.R. Pg.727). Considering the relevant provisions, such contention before the Court was rejected by the Division Bench. In view of the aforesaid judgment also, the contention of the learned Advocate for the petitioner is not sustainable.

At last Mrs. Pahwa has submitted that in any view of the matter, the order of compulsory retirement made against the petitioner is harsh. The act of delinquency committed by the petitioner is not such for which he should have been retired compulsorily. The Honourable Supreme Court in the matter of STATE BANK OF INDIA AND ORS. VS. SAMRENDRA KISHORE ENDOW & ANR.((1994) 2 SCC 537 has endorsed the view that the High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant; it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to procedure prescribed in that behalf, and whether the rules of natural justice are not violated. In view of the above

observations made by the Honourable Supreme Court, it would not be expedient for this Court exercising its power of judicial review under Article 226 of the Constitution to interfere with the order of punishment which the Disciplinary Authority has considered adequate after appreciating the evidence and examining the record. In the aforesaid premises, I do not find any merit in the petition. The petition is, therefore, summarily rejected.

sf-rmd